TELECELLULAR

OPPOSITION TO PETITION FOR PARTIAL RECONSIDERATION

EXHIBIT B

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December 18, 1997

VIA FAX (202) 828-8409

Ms. Elizabeth R. Sachs, Esq.
LUKAS, McGOWAN, NANCE & GUTIERREZ
111 Nineteenth St., N.W.
Suite 1200
Washington, D.C. 20036

Re: Telecellular de Puerto Rico, Inc.
Our file number: 5-2227

Dear Ms. Sachs:

We have examined North Sight Communications, Inc.'s Petition for Partial Reconsideration dated December 12, 1997. In connection with it, we held a telephone conference on December 16, 1997 with Messrs. Roger Crane and David Barrett. They requested us to inform you regarding the law in Puerto Rico applicable to the following issues:

1. Whether there were any special requirements, such as inscription in some register, that had to be met for the existence of a joint venture.

2. The effects of a foreign corporation's failure to register to do business in Puerto Rico with the Commonwealth's Department of State.

With regards to the first inquiry, we found that the requirements for a joint venture were most recently set forth in Daubón Belaval v. Secretary of the Treasury, 106 DPR 400, 6 OTOSCPR 564, particularly at 564, footnote 2 and 578-580 (1977), enclosed herewith. Note that no mention is made of any inscription in any register as requirement for the existence of a joint venture.

The distinction between a partnership (sociedad) and a joint venture (empresa común) is not made very clear in Daubón Belaval.

However, it need not be because the case arises in the context of tax law and, for taxing purposes, both are treated in the same way: their income is taxed separately from that of their members. This should not lead to the misconception that a joint venture has the same legal status generally as that of a partnership.

In Planned Credit of P.R. v. Page, 123 DPR 245, 3 OTOSCPR 344 at 347C (1975), a case arising in the context of general contract law, the joint venture had been distinguished from the partnership by characterizing the first as "an operation limited to one sole transaction". Planned Credit, 3 OTOSCPR at 348 (pages 347-350 are also enclosed herewith). In addition, as opposed to a partnership, the joint venture is not a distinct legal entity; a joint venture is the joint activity of several entities towards a common goal pursuant to the contractual relation between them. Accordingly and most important, no special requirements need be met for the validity of the joint venture; it need only meet those that generally apply to any valid contract.

Paradoxically, a partnership also exists in virtue of a valid contract which need not be registered anywhere as a requirement for the partnership to exist. It is thus no wonder that Planned Credit tells us that it is sometimes difficult to distinguish between a Partnership and a Joint Venture. Registration is only necessary in the Registry of Commercial Partnerships kept by each district's Registrar of the Property if the partnership is going to act as a merchant, i.e., as a link in the chain between the producer and the consumer.

As applied to the North Sight Petition for Partial Reconsideration, those general principles entail that the joint venture that is called "TELECELLULAR" is a valid joint venture because the contracts that gave it birth and sustain it have been held to be valid and enforceable by the Puerto Rico courts. Moreover, those contracts, the Joint Venture Agreement and the Construction and Management Agreement, require and exclusively authorize TPR to appear on behalf of TELECELLULAR and/or each of the licensees before the FCC in matters under the jurisdiction of that agency.

On the other hand, the FCC actions in response to TPR's appearances are taken ultimately with regards to "the participating Specialized Mobile Radio ("SMR") licensees of TELECELLULAR". Telecellular's Petition for Reconsideration filed June 20, 1997, see also the letters of April 11 and 15, 1996 from Mr. Richard S. Meyers to Mr. Edward Nemeth.

With regards to your second inquiry, the Puerto Rico Corporations' Law of 1995, P.R. Laws Ann., Tit. 14, sec. 3163 clearly sets forth the consequences of a foreign corporation's failure to register to do business in Puerto Rico: a legal proceeding in which it is taking part as a plaintiff may be stayed until the corporation applies for and is issued a certificate of authorization to do business in Puerto Rico. That would appear to be the only advance consequence, if any, of a foreign corporation registering doing business in this jurisdiction without previously registering. While it should not be granted that the licensees were doing business in Puerto Rico, the issue is of no consequence because section 3163(d) unequivocally provides that the failure of a foreign corporation to register to do business in Puerto Rico does not impair the validity of its corporate acts nor prevents it from defending itself in any proceeding in Puerto Rico (copy of the section in the original Spanish enclosed).

We hope that this meets your information needs regarding the matters we were consulted about. If not, do not hesitate to call for further clarification or comment.

Cordially,

José R. García Pérez

/mt
Encls.

c: Mr. Roger Crane
Mr. David L. Barrett
A. J. Bennazar Zequeira, Esq.

[ajb\tpr\3sachs]

[redacted]

6 CTOSCPR 564
106 DPR ___

(Translation)

564

IN THE SUPREME COURT OF PUERTO RICO

Horacio Daubón Belaval et al.

Plaintiffs and appellees

v.

Secretary of the Treasury of Puerto Rico,

Defendant and appellant

Review

No. R-77-114

Judgment of the Superior Court, San Juan Part, Juan José Ríos Martínez, Judge

MR. JUSTICE NEGRON GARCIA delivered the opinion of the Court.

San Juan, Puerto Rico, October 17, 1977

The controversy under our consideration opens the door to the analysis of the legal rules and criteria required to distinguish a "partnership"[1] from "common ownership"[2] in tax law matters. This area is one in which, due to the

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[1] "Partnership - The term . . . shall include, further, two or more persons, under a common name or not, engaged in a joint venture for profit." (13 L.P.R.A. § 3411(a)(3).)

[2] It is well established that the mere community of property does not constitute a joint adventure. . . To constitute a joint adventure the co-owners must, without actually forming a partnership, contribute their condominia and engage in some specific transaction for profit; they must share in profits and losses; there should exist some fiduciary relationship as between partners so that there may exist a mutual agency in any transaction carried out within the scope of the joint adventure, each one having a voice and vote in the management of the business, although they may agree that one or more of them may act on behalf of the others in the conduct of the enterprise, as is the case in partnerships. Puig v. Tax Court, 65 P.R.R. 691, 695 (1946).

fluidity of situations and protean facts, it is difficult to regulate and set forth--in a methodical and congruous fashion--our juridical cogitation, emanating from our case law doctrine which establishes a terminus between both institutions. Let us state the facts.

In the course of the year 1971, the Daubón-Belaval brothers filed several suits against the Secretary of the Treasury challenging the latter's refusal to refund the taxes paid from 1961 to 1969, both years inclusive; as well as the fact that their relationship was considered a partnership for tax purposes. After consolidating the actions, the trial court received the stipulation copied below plus evidence on the fiduciary relationship between the brothers.

> Horacio, Druso, and Vasco Daubón-Belaval, Ramón Daubón-Morales, and Esther Belaval Vda. de Daubón, inherited several properties from Ramón L. Daubón-Cabrera, who died on December 10, 1948.
>
> After the Estate of Ramón L. Daubón-Cabrera was established, the heirs sold two of the properties inherited to Mr. Francisco Rahola for $85,000. They shared the proceeds of the sale in the following manner:
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> | | | |
> |---|---|---|
> | a. | Esther Belaval Vda. de Daubón | $36,776.23 |
> | b. | Horacio, Druso, and Vasco Daubón-Belaval | 31,567.47 |
> | c. | Ramón Daubón-Morales | 16,656.30 |
>
> With their respective shares ($31,567.47) resulting from the two properties sold plus two loans, Horacio, Druso, and Vasco Daubón-Belaval built a three-story concrete building at 1510 Ponce de León Avenue. They took a $65,000 loan

366

was held and, as a result thereof, the Internal Revenue Bureau determined the existence of the partnership. At the same time the total amount for deficiencies was reduced to $29,602.54 after the hearing.

The deficiencies for the previous years, that is, 1952, 1953, 1957, 1958, and 1960, were also litigated before the San Juan Part of the Superior Court of Puerto Rico, under Civil No. 63-1668. On March 6, 1964, this court speaking through its judge, Angel M. Umpierre, dismissed the complaint filed by the Daubón-Belaval brothers. A petition for review against said judgment was filed before the Supreme Court of Puerto Rico (Horacio Daubón Belaval et al., v. Secretary of the Treasury, R-64-212). On February 17, 1965, the Supreme Court refused to issue plaintiffs' writ of review, thus affirming the judgment of the Superior Court, San Juan Part, in Civil No. 63-1668.

AFTER THE TAX DEFICIENCY

Since the deficiencies for the years 1952 to 1960 were litigated and adversely adjudged, the taxpayers, complying with the judgment, prepared and filed as a partnership the income tax returns for the years subsequent to 1961.

Nevertheless, within the statutory period fixed for their payment--April 15, 1966--the Daubón-Belaval brothers filed a formal claim for refund of the income taxes paid for the years 1961 to 1965, both years inclusive.

No. R-77-114 (Translation)

In reply to such refund claims, on November 7, 1968, the Income Tax Bureau sent a letter which essentially reads as follows:

"Concerning the above-mentioned refund claims filed on April 15, 1966, your are hereby advised that no measures shall be taken to that effect until the case of the deficiencies for the years 1964 and 1965 is decided. We are enclosing under separate cover a notice of deficiency to that effect."

The brothers Druso, Horacio, and Vasco Daubón-Belaval understood then, as they still understand today, that they did not constitute --neither then nor now--a partnership, but a co-ownership, not with regard to the taxable years which have been litigated and settled, but concerning the years from 1961 until 1969, both years inclusive. The reasons adduced by the Daubón-Belaval brothers are the following:

(a) The lease contracts of their properties require the consent, participation, and signature of each and everyone of the three brothers.

(b) All current accounts require the registration of the signatures of each and everyone of the three

569

No. R-[illegible] (Translation)

brothers, and at least two of the three signatures are required when drawing a check.

(c) No one shall take or negotiate any kind of loan, without the individual and independent authorization, concurrence, and approval of the three brothers, Horacio, Druso, and Vasco Daubón-Belaval.

(d) None of the brothers shall subrogate himself expressly or impliedly in a fiduciary relationship on behalf of the other brothers.

(e) Since 1961, the three brothers keep their individual accounting under the direction and supervision of a Certified Public Accountant.

On the other hand, the Secretary of the Treasury alleges that during the years in question plaintiff has been operating as a partnership and not as a common ownership. Defendant contends that:

(a) to expedite the administration of the construction of their business and, later on, the control of the rent incomes and expenditures of said business enterprise, a current account was opened at the Banco Popular in the name of the partnership, Daubón Belaval Brothers. They agreed that the actions of two of

570

Translation

that bind the three partners when
[illegible] that activity
all the expenses related to the build-
ing were treated with the mentioned
terms:
the net rents were deposited in equal
shares for each one of the three
partners. This has been this since
[illegible] until the present.
on [illegible] between Señora
[illegible] and [illegible] before
[illegible] the joint declaration
that the following facts had been
established:
"The plaintiffs acquired the
[illegible] urban term rustic
[illegible] situated [illegible]
and [illegible] where
[illegible] Arabia Mutual Entrusts.
They have a mutual bank account;
mutual interest in the profits;
they operate for profit; they
have mutual liability for
losses and losses; mutual
responsibility in the conduct
and administration of the
business; mutual contribution
for the acquisition or con-
struction of the building
which yields rents; and zero
[illegible] by the partners.

No. R-[illegible]-114 (Translation)

> While the Daubón Belaval brothers awaited the administrative decision on their refund claims, filed on February 16, 1968, the Supreme Court of Puerto Rico decided the case Comm. J. Fernández v. Sec. of Treas., 95 P.R.R. 711 (1968). Plaintiffs allege that this case is applicable to the problem we are now facing. The Secretary of the Treasury adduced that a considerable difference had been established between the case at bar and Comm. J. Fernández, 95 P.R.R. 711 . . .

In the light of those facts, the learned trial court concluded that the judgment entered in case 63-1668, which covered the taxable years from 1952 to 1960, did not constitute a collateral estoppel for the adjudication of the previous years under its consideration. The trial court held, furthermore, that there was no fiduciary relationship between the brothers and consequently they constituted a common ownership, and not a partnership, as decided in Comm. of J. Fernández v. Sec. of Treas., 95 P.R.R. 711 (1968).

At the request of the Secretary of the Treasury we agreed to review.

I

The first error challenges the trial court's refusal to apply the doctrine of res judicata to the taxable years running from 1961 to 1965, and from 1966 to 1967. We agree. We have recognized frequently that the defense of res judicata may be successfully invoked in tax actions --Capó Sánchez v. Sec. of the Treas., 90 P.R.R.

572

No. R-77-114 (Translation)

145 (1954); Pereira v. Hernández, 83 P.R.R. 156, 161 (1961), and Buscaglia, Treas. v. Tax Court, 72 P.R.R. 576, 580 (1951)--in its modality known as collateral estoppel by judgment when a litigant seeks to relitigate a matter or fact previously adjudicated by a court in an action between the same parties, under guise of another cause of action different from the one raised in the first suit.

The judgment rendered in the first suit--March 6, 1964 (Civil No. 63-1668)--, insofar as pertinent, reads:

> The plaintiffs acquired the lot as a grant from their mother; erected a building, and collect rents payable to the Daubón Belaval brothers. They have a mutual bank account, mutual interest in the profits; they operate for profit; they have mutual responsibility in the conduct and administration of their business; mutual contribution for the acquisition or construction of the building which yields rents; and service is rendered by all partners. Suárez v. Descartes, 85 P.R.R.; Rodríguez Viera v. Sec. of the Treas.--Review 343 as of December 31, 1963. . . .
>
> . . . . . .
>
> In view of the rents yielded by the building located at 1510 Ponce de León Avenue, plaintiffs constitute a partnership or joint venture for taxing purposes.

It became final and unappealable when this Court refused to issue a writ of review. In harmony with the foregoing decision the Secretary continued considering the Daubón Belaval brothers as a partnership with regard to the rentals accruing from the leasing business. From 1961 on the Daubón Belaval brothers filed their income tax returns as a partnership with regard to said business. It was in 1966 that they requested the Secretary a refund of the taxes paid during 1961 to 1965, both years inclusive.

On February 16, 1968, this Court rendered its decision in Comm. of J. Fernández v. Sec. of the Treas., and in

1971 appellees filed the other actions which are now under our consideration.

Even when we recognize that in Civil Case No. 63-1668 the cause of action was the "collection" of taxes, and the case at bar involves a "refund" of taxes, it is evident that they are trying to relitigate the same action under guise of a different one, hence the Collateral Estoppel by Judgment doctrine may be applied.[3]

The trial court's thesis concluding that the collateral estoppel by judgment doctrine is not applicable to tax actions involving different years when the applicable legal principle has changed--by virtue of law amendments or judicial decisions--can be supported by Commissioner of Internal Revenue v. Sunnen, 333 U.S. 591 (1948). Nevertheless, said thesis does not ponder over the fact that, as a general rule, a variation of the law in force shall have prospective validity and effect. Sunnen, supra, 598-599. Hence, we determine that the collateral estoppel by judgment doctrine is of strict application and that it should be sustained with regard to the controversy involving the years 1961 to 1967. It only remains for us to analyze in our next assignment the correctness of the judgment with regard to the taxable years from 1968 to 1969.

II

The second error questions the determination stating that the relationship between plaintiffs-appellees, with

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[3] In addition to our above-cited case law, see: Blackman & Ass., Inc. v. United States, 409 F. Supp. 1264, 1265 (1976); Adolph Coors Co. v. C.I.R., 519 F.2d 1280, 1283 (1975); Jones v. United States, 466 F.2d 131, 134 (1972).

Without considering none of the rules formulated herein as essential to the establishment of a partnership, in strict tax law, the following may be considered as indicative of the existence of such a partnership: (1) mutual interest in profits; (2) mutual liability for debts and losses, although an express agreement not to share the loss is not essential to the constitution of the partnership; (3) mutual responsibility in the conduct of the partnership's business, but it is a well-recognized exception that a partnership may exist notwithstanding the delegation to one member of the management of the business in a greater proportion; (4) common contribution to and ownership of partnership property, but this test has slight value, since it is considered that a partnership may be constituted even if only one of the partners is the owner of the property and the firm capital consists merely of the right of the other member to use the property belonging to the former as in the case of industrial partners in Puerto Rico; (5) the rendition of service by all partners, although the possibility of an inactive partner is admitted, as in the case of silent partners in Puerto Rico; (6) that no prohibition exist to alienate or transfer any property or interest of the partnership, although the inclusion of such a restriction should not be considered as to negate the existence of a partnership.

The following is considered to be pertinent evidence to the existence of a partnership: how book entries are made, although they may not be considered as conclusive evidence; representation before the public; the statements to government agents of the businesses of the partnership; how purchases are made and the way in which credit has been obtained in the market; who makes the contracts and assumes liabilities; the name in which bank accounts are opened; the name in which court actions or claims are filed with the State's authorities; the existence of partnership contracts. As to this last medium of evidence, although it is stated in the contracts that the parties have not had the intention of constituting a joint adventure or a partnership, if the agreements and motivations of the parties so show it, it will be considered that such joint adventure or partnership was established for the proper tax purposes: 6 Mertens, The Law of Federal Income Taxation [illegible] et seq., §§ 35.03 and 35.04.

In the supplement corresponding to the year 1986 of the above-mentioned work we find

576

No. R-[illegible] Translation

> the case of Tate v. Knox, 131 F. Supp. 514, 517 Donovan, 1955), in which it is decided that a joint adventure exists once the following facts are proved: (a) contribution of money, property, time or skill in a common undertaking; b) a joint proprietary interest and mutual control of the business; (c) sharing of profits, aside from profits received in payment of wages, but not necessarily of losses; (d) a contract either express or implied showing that a joint adventure was in fact entered into. 384-385 (underscore supplied).

More recently in Comm. of J. Fernández, supra, we emphasized that none of the enumerated factors was determinative, thus making clear that if taken as a whole they constituted a keystone to distinguish a mere common ownership from a partnership. To that effect, and summarizing, we held that:

> . . . In accordance with Puig, Vías, Appleby, and Powell, neither the source of the funds used in the construction of the building, nor the fact that they have a proxy, as well as the fact that they have a common bank account, is in any way controlling to decide whether the relationship between two or more persons is a partnership or is merely a community property. The fact that they enjoy the property in usufruct is not conclusive either. Act No. 53 of 1928 in its § 70 authorized the granting of the usufruct in perpetuity to the grantee and their successors in title. See Jiménez v. Alvarez, 69 P.R.R. 299-306 (1948). 720 (underscore supplied).

The rules here established should be broadened by the comments made by Spanish scholars in the civil law area regarding the prevailing parallelism between a common ownership and a partnership, and the difficulty which arises from their differentiation. The factors taken into consideration are: (1) juridical nature, (2) different basis, and (3) purpose or objective. As to its nature, Manresa points out that "a common ownership is a state of law or of fact which gives rise to previously established and regulated rights and obligations, as it happens when various heirs or legatees possess the undivided estate or common

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[illegible] Marcesa, Jurisprudencia 379 (5th ed.). As to its basis a partnership is the juridical act by which persons [illegible] and [illegible] a common ownership is to avoid the [illegible] while the purpose of the common ownership is to avoid the [illegible] and favor its preservation. In fact, a common ownership constitutes a passive state [illegible] which agreed upon, and not by chance, while a partnership constitutes an active state, used with the [illegible] to obtain a lucrative profit." 15 [illegible] Civil Code, 11th ed. (1993). Said author points [illegible] to the fact that there does not exist a relationship [illegible] by the presence or absence of profitable purpose and a relation to the extent of the profit. The patrimony of a common ownership stands separate from the patrimony of a partnership is to be unincorporated. This is why the co-owner has the right to share the rights held in common, i.e., that which has been acquired in common. A partner has a right to a share in profits, i.e., the transformation of what has been acquired in common is a result of its social use. A common ownership is a partnership in repose, while a partnership is a common ownership in motion." Id. Ibid. Underscore supplied. See also: Luis Justin, Derecho Civil Español, Tomo I Vol. 1 (10th ed.) III Diez, Derecho Mercantil Manual de Derecho Civil Español 387 (4th ed.).

No. R-77-114 (Translation)

(8-10) Upon applying the rules set forth above to the case at bar, we deem that, pursuant to the Income Tax Act, appellees' leasing business is a joint venture since--both in a quantitative and qualitative manner--the following factors concur cumulatively to show that it is an active action agreed upon whose basis is the express joint wills and efforts directed to increase the capital of a social or common patrimony: (a) contribution of money, property, and time in a joint cause. Three of the four brothers who first constituted the estate decided to engage in the mutual effort of constructing a building meant for the lucrative leasing business through a joint money contribution which was supplemented with other sums acquired through obligations that would be complied with jointly; (b) development of a combined property interest and a mutual conduct of the business which can be proved by execution of contracts and collection of rents in the name of their partnership (Daubón Belaval Brothers). With said name they kept a bank account which facilitated the construction of the building's extension; (c) distribution of profits. Logically, this implies that the Daubón Belaval Brothers share the profits, and also, whatever losses there might be; (d) existence of an implied contract which in fact reveals the establishment of a joint venture;[4] (e) fiduciary relationship between the

[4]The Secretary accurately points out that: "in this case the measures taken by plaintiffs-appellees is not restricted to--as in the cases of Vías v. Tax Court, supra, Puig v. Tax Court, 65 P.R.R. 691 (1946), and Comm. of J. Fernández v. Sec. of the Treas., supra--profit gains arising from their respective contributions, but that they have a say in the administration of the common owned property. But there is still more,

No. R-77-114 (Translation)

Daubón Belaval brothers. It is our duty to make clear that the legal doctrine criterion which characterizes a partnership as a trust agreement "is contracted intuiti personae."[5] This means that a person shall not enter the partnership without the unanimous consent of the other partners--art. 1587, Civil Code (31 L.P.R.A. § 4358)--for the basis of a partnership is the mutual confidence between the persons which are part of it and who are interested in the success of the enterprise.[6] The fiduciary relationship is not impaired, as the trial court understood, only because the Daubón Belaval brothers had set by-laws regarding combined or individual powers. The fact that none of them was manager of the others does not have the scope given to it, for the

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from the same moment that plaintiffs-appellees agreed upon constructing the building, the intention to create a joint venture for profit, could be evinced. To that effect they borrowed large sums of money for the partnership Daubón Belaval Brothers; they bound themselves to pay jointly and severally the loans received; they opened an account at the Banco Popular de Puerto Rico in the name of the partnership, and any of the plaintiffs could draw from that account with two of the required signatures. Thus, we see that there was a fiduciary relationship between them. Said enterprise never ceased its functions and after 1960 they constructed three additional stories to the building, pursuant to the verbal agreement of the plaintiffs. Furthermore, the lease contracts were made in the name of the Daubón Belaval Brothers. Finally, we clearly see that the basic purpose of the Daubón Belaval brothers in establishing said business, was to gain profits by means of a joint venture."

[5] II-2 Puig Brutau, Fundamento de Derecho Civil 405 (1956).

[6] It should be noted that the limitation to which appellees agreed is in the sense that the lease contracts "require their authorization, intervention, and their signatures." Therefore, it is a clear sign of the existence of a partnership, in opposition to a common ownership where

No. R-77-114 (Translation)

Civil Code provides for the designation of one or several managers without changing the essence of a partnership.[7] Articles 1583-1587 (31 L.P.R.A. §§ 4354 to 4358).

[17] Finally, and with regard to the taxable years in controversy, 1968-69, we are aware of the fact that two decades have gone by since the death of the predecessor, Daubón. The time elapsed is an element to be taken under consideration together with the other factors mentioned above. The sum total of these factors determines unfailingly the existence of the Daubón Belaval Brothers Partnership for taxable purposes, as the only juridical conclusion. The case at bar is clearly distinguishable from the case of Comm. of J. Fernández, supra.

The judgment is reversed.

Mr. Justice Rigau took no part in this decision.

Mr. Justice Martín concurs in the result.

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the joint-owners are free to transfer their rights to a third party pursuant only to the limitations set forth in the redemption institution.

[7] Regardless of the foregoing, we actually harbor no doubts as to the existence of such confidence, for it is evinced by the fact that the signature of two of the brothers suffices to draw from the bank account. This implies that the brothers always have full confidence in each other.

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continued to decline, to the extent that Brite executed the chattel mortgage and later sold the equipment obtaining, between one thing and the other the sum of $15,000.00.

At this time, the appeal has been submitted with the assignments of error pointed out by appellant in his original petition and argued in a brief memorandum of authorities on that particular. Plaintiff-appellee has not filed any brief whatsoever.

To subserve the exposition of this opinion, we will proceed to discuss individually those errors which are not interrelated, analysing jointly the ones which show common characteristics or which stem from the same premise.

(1) The first error, without further elaboration in itself, alleges that the judgment is contrary to the evidence which the court had before it and to the applicable law. We have thoroughly examined the extensive transcript of evidence and the documentary evidence, and except for what is hereinafter stated, this error was not committed and does not deserve analysis but to reiterate the rule that ordinarily, in our appellate function, we will not disturb the trier's weighing and findings of fact. Rodriguez v. Concreto Mixto, Inc., 98 P.R.R. 568 (1970); Rodriguez v. U.A. Co. of America, 96 P.R.R. 851 (1968).

The second, third, fourth, fifth, and sixth errors rely on the same premise, that is, that plaintiff had no cause of action or standing to commence the claim since the money lent to American was the product of a partnership between Randolph Mattern (sic) and Planned's predecessor Brite).

These errors lack merit, since in the case at bar a partnership did not exist, but a joint venture. The guaranty on

which the cause of action is grounded was given by Page to Brite and not to any other natural or juridical person. There is nothing in the law, nor has it been pointed out to us, which precludes a corporation from participating in a joint venture with a natural person, as the one agreed upon between Mr. Mattern [sic] and Brite, and which consisted in that each one would contribute in the same proportion 50% of all the moneys to finance American with the express purpose of dividing the profits or likewise suffer the losses. It is a usual transaction in business by which a party contributes the working capital in an enterprise and it does not necessarily mean, as appellant adduces, that a partnership is created or exists.

[2] Even though sometimes it is difficult to distinguish between a Partnership and a Joint Venture, the examination of the letters (Plaintiff's Exhibits 17 and 18) by which Brite and Mattern [sic] came to the agreement convinces us, besides the fact that such documents denominate the same as a joint venture, that the essential characteristic which makes such institution different from a partnership is present, to wit, an operation limited to one sole transaction.[2] The text of the guaranty lends support to this conclusion, since it was constituted exclusively in favor of Brite.

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[2] See: 2 Rowley, On Partnership, Joint Adventures, §§ 52.1 - 52.20, at 459-489 (2d ed. 1960); 2 Willinston, On Contracts, §§ 318 A and 318 B, at 556-617 (3d ed. 1959); Empresa Mercantil en Comunidad, III-2 Puig Brutau, Fundamentos de Derecho Civil 23 et seq. (1973); 1 Langle and Rubio, Manual de Derecho Mercantil Español, 707-712 (1950).

It is not an association agreed upon for diverse operations and of a continuous nature, but one with a restrained and specific end, which expressly discarded the conferring of interest in the businesses, profits, losses or obligations of one towards the other, and in which Mattern [sic] delegated by trust on Brite all the measures regarding his participation.

[3] The general rule adopted by the majority of the courts in other jurisdictions is that a corporation does ordinarily have the power of embarking on a joint adventure so long as it is for purposes otherwise within the scope of the corporate powers. Anno: Corporation in Firm or Joint Venture, 60 A.L.R.2d, 936-939.

The seventh error assigned points out that the trial court should have stayed the judicial proceedings considering that the plaintiff corporation was voluntarily submitted to a reorganization procedure under Chapter II of the Federal Bankruptcy Act at the United States South District Court corresponding to the City of New York.

The error is frivolous. The proof of the existence of such procedure constitutes an order from the Referee in Bankruptcy who precisely authorized plaintiff to continue operating.

[4] It is adduced as ninth error that the court did not impose all the strictness of the law in view of the usurious loans evidenced by the contracts which culminated with Page's guaranty. The difficulty for this assignment to prosperlies on the fact that plaintiff expressly waived the collection of such interest upon desisting from the $10,000.00 claimed, what obviously relieved it from the penalties provided in Art. 1691 of the Civil Code. It is [illegible]

[redacted]